

MAR 26 2013

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROBERT VERNON HOSTETTER,) CASE NO. 7:13CV00099

Petitioner,)) MEMORANDUM OPINION

v.))

HAROLD CLARKE, DIRECTOR,)) By: James C. Turk
Respondent.)) Senior United States District Judge

Robert Vernon Hostetter, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the December 5, 1984, judgment of the Circuit Court of Rockbridge County under which he stands convicted of attempted murder, murder, malicious wounding, and related offenses, for which he was sentenced to two life terms in prison. The court finds that the petition must be summarily dismissed as successive, pursuant to 28 U.S.C. § 2244(b).¹

Court records indicate that Hostetter previously filed a § 2254 petition concerning these same convictions, and the court dismissed the petition as untimely filed, under 28 U.S.C. § 2244(d)(1), but also as without merit. Hostetter v. Johnson, Civil Action No. 2:03CV673 (E.D. Va. Aug. 2, 2004), appeal dism'd, 122 F. App'x 656 (4th Cir. 2005). Thus, Hostetter's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition.

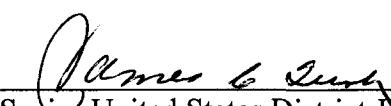
Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only if petitioner secures specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b)(3). Because

¹ Under Rule 4(b) of the Rules Governing § 2254 Cases, the court may summarily dismiss a § 2254 petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

Hostetter does not demonstrate that he has obtained the required certification from the Court of Appeals, the court will dismiss the petition without prejudice as successive. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 26th day of March, 2013.



Senior United States District Judge